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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/000,335	12/04/2001	Vedvyas Shanbhogue	2207/13056	9762
23838	7590	03/22/2005	EXAMINER	
KENYON & KENYON 1500 K STREET, N.W., SUITE 700 WASHINGTON, DC 20005			BONURA, TIMOTHY M	
			ART UNIT	PAPER NUMBER

2114

DATE MAILED: 03/22/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/000,335

Applicant(s)

SHANBHOGUE, VEDVYAS

Examiner

Tim Bonura

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 03 January 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-18 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-18 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 04 December 2001 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.

- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_



NADEEM IQBAL  
PRIMARY EXAMINER

### DETAILED ACTION

- **Claims 1-18 are rejected under 35 U.S.C. 102(b) as being anticipated by Cook, et al, U.S. Patent Number, 5,966,304.**

#### *Claim Rejections - 35 USC § 102*

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1-18 are rejected under 35 U.S.C. 102(b) as being anticipated by Cook, et al, U.S. Patent Number, 5,966,304.

3. Regarding claim 1:

- a. Regarding the limitation of “taking the second engine out of service,” Cook discloses a system with a primary and a secondary controllers (Lines 21-22 of Column 2), the primary controller is taking out of service for upgrading. (Lines 23-26 of Column 2). Cook discloses that the primary and secondary controllers are perfectly symmetric and can be used interchangeably. (Lines 52-57 of Column 5). (**Note:** for the purposes of rejection the prior art primary controller is used to reject the claimed second engine, the secondary controller is used to reject the claimed first engine).

- b. Regarding the limitation of “upgrading the application on the second engine,” Cook discloses a system wherein the primary controller can be upgraded. (Lines 41-47 of Column 2).

- c. Regarding the limitation of “assigning the second engine as a standby engine to the first engine and receiving run state updates from the first engine,” Cook discloses a system wherein the secondary controller becomes the main execution controller of the system. (Lines 28-32 of Column 2).
- d. Regarding the limitation of “assigning the first engine as the standby engine to the second engine and receiving run state updates from the second engine,” Cook discloses a system wherein the primary controller, upon being upgraded and plugged back into the backplane, can receive updates from the secondary controller. Cook terms this as qualification (Lines 3-8 of Column 6), and it can occur once the upgrade controller is plugged back into the back plane. (Lines 33-55 of Column 9).
- e. Regarding the limitation of “upgrading the application on the first engine,” Cook discloses a system wherein the secondary controller can be upgraded in the same manor as the first. (Lines 26-27 of Column 2).
4. Regarding claim 2, Cook discloses that the primary controller is disqualified and disabled. (Lines 33-40 of Column 9).
5. Regarding claim 3, Cook discloses that the secondary controller is disqualified and disabled. (Lines 56-58 of Column 9).
6. Regarding claim 4, Cook discloses a second that can re-qualify either the secondary or primary controller. (Lines 45-48 and 60-63 of Column 9).
7. Regarding claim 5, Cook discloses that qualification of an upgraded module is conditional upon verification of configuration of the controller. (Lines 40-45 of Column 6).

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8. Regarding claim 6, Cook discloses the secondary engine is not qualified and refuses the control of the system. (Lines 48-51 of Column 7).
9. Regarding claim 7, Cook discloses the secondary engine is qualified and accepts the control of the system. (Lines 52-58 of Column 7).
10. Regarding claim 8, Cook discloses a system with multiple controllers. (Lines 21-22 of Column 2).
11. Regarding claim 9, Cook discloses a system wherein the primary controller, upon being upgraded and plugged back into the backplane, can receive updates from the secondary controller. (Lines 33-55 of Column 9).
12. Regarding claim 10, Cook discloses a system that has controllers is perfectly symmetrical and operates together. (Lines 53-57 of Column 5).
13. Regarding claim 11:
  - f. Regarding the limitation of “determine if said active engine and said standby engine are executing different versions of an application software,” Cook discloses a system of controllers that can have different operation systems that can be indicated. (Lines 23-28 of Column 5). The system also have can compare the first controller and the second controller for coherency. (Lines 12-15 of Column 6). An indication of a lack of coherency indicates a difference in the controller makeup. (Lines 15-18 of Column 6).
  - g. Regarding the limitation of “sending a description of work units from said active engine to said standby engine,” Cook discloses a system wherein the primary controller, upon being upgraded and plugged back into the backplane, can receive updates from the secondary controller. Cook terms this as qualification (Lines 3-8 of Column 6), and it

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can occur once the upgrade controller is plugged back into the back plane. (Lines 33-55 of Column 9).

h. Regarding the limitation of “sending database activities from said active engine to said standby engine,” Cook discloses a second that can re-qualify either the secondary or primary controller. (Lines 45-48 and 60-63 of Column 9).

14. Regarding claim 12, Cook discloses a system where upon the re-connection of the primary controller, the backplane sends a signal to the secondary controller to indicate a return of the controller. (Lines 15-20 of Column 3).

15. Regarding claim 13, Cook discloses that the controllers are synchronized (Lines 66-67 of Column 4), and that information regarding the states of the controllers can be passed between them. (Lines 6-7 of Column 5). The system controllers can have different operation systems that can be indicated. (Lines 23-28 of Column 5).

16. Regarding claim 14, Cook discloses a system with multiple controllers. (Lines 21-22 of Column 2).

17. Regarding claim 15:

i. Regarding the limitations of “a first engine; a second engine,” Cook discloses a system with a primary and a secondary controllers (Lines 21-22 of Column 2).

j. Regarding the limitation of “a computer readable memory that stores instructions that when executed by said first and second engine cause the fault tolerant system to: designate said first engine as an active engine and said second engine as a standby engine,” Cook discloses a system wherein the secondary controller becomes the main execution controller of the system. (Lines 28-32 of Column 2).

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- k. Regarding the limitation of “determine if said active engine and said standby engine are executing different versions of an application software,” Cook discloses a system of controllers that can have different operation systems that can be indicated. (Lines 23-28 of Column 5). The system also have can compare the first controller and the second controller for coherency. (Lines 12-15 of Column 6). An indication of a lack of coherency indicates a difference in the controller makeup. (Lines 15-18 of Column 6).
- l. Regarding the limitation of “send a description of work units from said active engine to said standby engine,” Cook discloses a system wherein the primary controller, upon being upgraded and plugged back into the backplane, can receive updates from the secondary controller. Cook terms this as qualification (Lines 3-8 of Column 6), and it can occur once the upgrade controller is plugged back into the back plane. (Lines 33-55 of Column 9).
- m. Regarding the limitation of “send database activities from said active engine to said standby engine,” Cook discloses a second that can re-qualify either the secondary or primary controller. (Lines 45-48 and 60-63 of Column 9).
18. Regarding claim 16, Cook discloses a system where upon the re-connection of the primary controller, the backplane sends a signal to the secondary controller to indicate a return of the controller. (Lines 15-20 of Column 3).
19. Regarding claim 17, Cook discloses that the controllers are synchronized (Lines 66-67 of Column 4), and that information regarding the states of the controllers can be passed between them. (Lines 6-7 of Column 5). The system controllers can have different operation systems that can be indicated. (Lines 23-28 of Column 5).

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20. Regarding claim 18, Cook discloses a system with multiple controllers. (Lines 21-22 of Column 2).

***Response to Arguments***

21. Applicant's arguments filed 01/03/2005 have been fully considered but they are not persuasive.

22. Regarding the arguments for claim 1:

n. The applicant states that the examiner has not submitted a reference that discloses any of the claimed limitations for claim 1. The applicant then goes on to further assert that the prior art of record, Cook, does not specifically teach the claimed limitation of “assigning the first engine as the standby engine to the second engine *and receiving run state updates from the second engine*” (emphasis added by the applicant). The applicant goes on to recite a section of the specifications with additional portions emphasized. (Page 7 (bottom) and 8 of the response). However, the claimed limitation does not state that the processors in the claimed limitations are synchronized or that the run state updates of the engines are upgrading software versions. The examiner contends that the broadest most reasonable interpretation of the claims is taught by the prior art of Cook, when Cook states “a disqualified controller 12b performs a qualification per process block 116, becoming a qualified secondary to controller 12b.” (Lines 60-65 of Column 9) The examiner contends that the qualification constitutes a receiving of state updates, and thereby covers the claimed limitation.

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23. Regarding the arguments for claims 2-10, no further arguments were presented. Since the claims are rejected and depend from rejected claim 1, the rejections stand.

24. Regarding claim 11, please see response for arguments for claim 1.

25. Regarding the arguments for claims 12-14, no further arguments were presented. Since the claims are rejected and depend from rejected claim 11, the rejections stand.

26. Regarding claim 11, please see response for arguments for claim 1.

27. Regarding the arguments for claims 16-18, no further arguments were presented. Since the claims are rejected and depend from rejected claim 15, the rejections stand.

### ***Conclusion***

28. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

29. Any inquiry concerning this communication or earlier communications from the examiner should be directed to **Tim Bonura**.

- The examiner can normally be reached on **Mon-Fri: 8:30-5:00**.

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- The examiner can be reached at: **571-272-3654**.

30. If attempts to reach the examiner by telephone are unsuccessful, please contact the examiner's supervisor, **Rob Beausoliel**.

- The supervisor can be reached on **571-272-3645**.

31. The fax phone numbers for the organization where this application or proceeding is assigned are:

- **703-872-9306 for all patent related correspondence by FAX.**

32. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov/>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

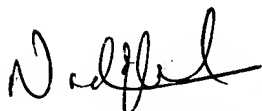
33. Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the **receptionist** whose telephone number is: **571-272-2100**.

34. Responses should be mailed to:

- **Commissioner of Patents and Trademarks**

**P.O. Box 1450**

**Alexandria, VA 22313-1450**



**NADEEM IQBAL  
PRIMARY EXAMINER**

**Tim Bonura  
Examiner  
Art Unit 2114**

tmb  
March 18, 2005